

EXHIBIT A

Deposition of Jon Robert Flickinger, 4/5/2005

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UNITED STATES DISTRICT COURT

2

DISTRICT OF MASSACHUSETTS

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4 CYCLE-CRAFT COMPANY, INC.,
d/b/a BOSTON HARLEY-DAVIDSON/
5 BUELL,
6 Plaintiffs,
7 vs. Case No. 04-11402-NMG
8 HARLEY-DAVIDSON MOTOR COMPANY,
INC., and BUELL DISTRIBUTION
9 COMPANY, L.L.C.,
10 Defendants.

11 -----

12 VIDEO DEPOSITION OF JON ROBERT FLICKINGER

13 Tuesday, April 5, 2005

14 9:29 a.m.

15 at

16 GRAMANN REPORTING, LTD.

17 710 North Plankinton Avenue, Suite 710

18 Milwaukee, Wisconsin

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21

22 Reported by Christine Kovac, RPR

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REDACTED

3 BY MR. REHNQUIST:

4 Q So, was there -- was there one meeting in which the
5 results of the audit were reported by Verduyn and
6 another meeting at which the -- the decision to
7 terminate was reached?

8 A I don't remember specifically, but I find it unlikely
9 that we would have discussed the results of the audit
10 and all of our findings without a discussion of
11 whether we should consider proceeding with
12 termination. Now, I would -- I also doubt that we
13 made a final decision to -- to -- to terminate at that
14 discussion. But usually those discussions would be
15 linked if -- in a situation like this where we
16 determine that there was significant non-retail sales
17 activity, we most certainly would have had a
18 discussion about whether we should proceed with
19 termination or not.

20 Q Um, can you just summarize for me what Mr. Verduyn
21 stated in reporting the results of his audit?

22 And if you need to instruct him not to answer,
23 you can go ahead and do that.

24 MR. BERKOWITZ: Well, what I'm going to do
25 is instruct you not to disclose any advice of counsel

<p style="text-align: right;">Page 222</p> <p>1 or any request for request of counsel during this 2 meeting. 3 THE WITNESS: Okay. 4 MR. BERKOWITZ: But as to this question, 5 I'll permit you to testify. 6 THE WITNESS: Okay. 7 MR. BERKOWITZ: The question is just what 8 was the report -- what was the report results of the 9 audit -- 10 THE WITNESS: Yeah. 11 MR. BERKOWITZ: -- by Mr. Verduyn if you 12 recall? 13 THE WITNESS: I don't have a general 14 recollection of the discussion, so I don't remember 15 the specifics. I remember we talked about the types 16 of non-retail sales that had occurred, um, the 17 involvement of a Florida broker or DCI I think was the 18 name of the company. Um, we reviewed some of the 19 documents that were collected in the audit, and 20 subsequently collected, uh, through other, um, 21 efforts, and generally discussed the nature of the -- 22 the severity of the non-retail sales. 23 Um, I think he presented that, you know, 24 verbally. There were some summaries of the -- as I 25 recall, of the -- you know, of each VIN and the</p>	<p style="text-align: right;">Page 224</p> <p>1 think we tried to gather some information from some of 2 the sales in Florida. Um, I can't remember if all 3 those came from Cycle-Craft or not. I don't believe 4 they call came directly from Cycle-Craft. 5 Q Where did they come from? 6 A I can't -- I don't recall where they came from. It 7 just seems like there were documents from someplace or 8 somebody in Florida or a discussion about documents 9 from Florida. I don't recall the specifics. 10 Q Do you recall any discussion about a dealer in 11 Louisiana? 12 A Not -- not at -- not at that time, no, I don't. 13 Q How long did this -- did this meeting take place when 14 Verduyn reported the results of his audit? 15 A How long was the meeting? 16 Q How long was the meeting? 17 A I don't recall specifically. 18 Q More than an hour? 19 A If I were to guess, it would be more than an hour, 20 yes. 21 Q More than two? 22 A I don't know. I -- 23 Q Is your best -- is your best estimate between one and 24 two hours? 25 A Yeah. That would be a fair guess, yes.</p>
<p style="text-align: right;">Page 223</p> <p>1 documents associated with those VINs. Um, I don't 2 remember too many details about what those documents 3 looked like, but he conducted an audit, so he had, you 4 know, the results of that. 5 BY MR. REHNQUIST: 6 Q Were any documents distributed in advance of this 7 meeting? 8 A I don't recall. Typically they would not be. 9 Q Why not? 10 A So I doubt it. 11 Usually -- you know, usually their stacks of, 12 you know, lots of detailed documents -- dealer 13 documents and other documents, and it's prohibitive to 14 copy so much of that stuff. So he would usually bring 15 it with him, and we'd have the -- he'd, you know, 16 share the results. We'd look at some of the documents 17 that he had, and -- and try to understand the issue 18 because they all are pretty unique -- um, and reach a 19 conclusion, make a decision. 20 Q So did he -- you said that he either showed or 21 described other documents in addition to documents 22 that he had collected at the audit? 23 A Yeah. As I recall, there were just a number of 24 documents. Some internally generated, some at the 25 audit. I think -- I don't remember specifics, but I</p>	<p style="text-align: right;">Page 225</p> <p>1 Q I don't want to you guess, but what's your best -- can 2 you -- 3 A Best estimate would be between an hour and a half and 4 two and a half hours perhaps. 5 Q And where was the meeting held? 6 A I believe it was in a conference room on the third 7 floor on our -- in our floor. 8 Q Okay. And the interrogatory -- 9 A Mm-hmm. 10 Q By the way, did you review those -- did you review 11 these interrogatory answers for accuracy? 12 A I believe I did. If I could look through the rest of 13 the documents, it might help jog my memory. When was 14 this done? Do you -- can you help me out on that? 15 Q Well, it's -- there -- they're not paginated, so if 16 you look at -- 17 A There's -- probably somebody signed this on a certain 18 date? 19 Q These are signed by Gene Ostrum on December 8th of 20 '04? 21 A Okay. December 8th of '04. I don't -- December of 22 '04. 23 Q Maybe it will help if I can point you to the page we 24 were on before. 25 A Yeah.</p>

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1	Q If you look at the top, it does say that the answers 2 were prepared by counsel with input from Jon 3 Flickinger?	1 beyond the fact that he was reporting his findings of 2 the audit.
4	A Mm-hmm. Yeah, I just don't know if I reviewed this 5 document when it was finally completed. I don't know 6 -- I don't know.	3 BY MR. REHNQUIST:
7	Q Okay. That's fine.	4 Q When you say his findings, what do you mean?
8	VIDEO TECHNICIAN: Counsel, can we change 9 tapes at this point?	5 A Um, providing us with detail about the types of sales, 6 who the sales were made to, who wrote checks for the 7 purchase of motorcycles, um, who the -- who was 8 reported to have been -- the bikes were reported to 9 have been sold, on what date, who the bikes actually 10 were sold to on -- on which dates. Um, the nature of 11 some of the miss -- let's call it misrepresentation or 12 miss reporting -- inaccurate reporting. Um, false 13 reporting of the -- of the sales reports.
10	MR. REHNQUIST: Yep.	14 Um, so he kind of went through, and he goes in 15 each of these situations, and this one he went through 16 and described what he believed to have occurred from 17 his review of all the available records and 18 information.
11	VIDEO TECHNICIAN: His is the end of 12 Videotape Number 3. We are off the record at 5:39 13 p.m.	19 Q Did anyone take any notes at this meeting?
14	(A brief pause in proceedings.)	20 A I don't recall if anyone was taking notes or not.
15	VIDEO TECHNICIAN: This is the beginning of 16 Videotape Number 4 and the continuing deposition of 17 Jon Robert Flickinger. We are back on the record at 18 5:40 p.m.	21 Q Did you take notes at this meeting?
19	BY MR. REHNQUIST:	22 A No.
20	Q To the best of your knowledge, Mr. Flickinger, who 21 attended this meeting where Mr. Verduyn made his 22 report? I know you mentioned some people before, but 23 I just want to make sure that I have that correct.	23 Q Why not?
24	A Well, I believe Jenny Kent was there, myself, Mike 25 Malicki, Joan Ostrum, Steve Verduyn. There were a	24 A I -- I just typically don't take notes at a meeting 25 like this. I -- I'm looking at documents, listening
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1	couple of others, but I can't say for certain that I 2 remember exactly that they -- who they were, if they 3 were at the meeting. I mean -- and I think they were 4 perhaps some of these other folks that were mentioned 5 here, but I just don't remember exactly.	1 to what's being said. Having -- there's a lot of -- 2 fair amount of conversation, and it's distracting to 3 take notes. Um --
6	Q Maybe Al Contois but you're not sure?	4 Q Did anyone who is at the -- putting aside counsel, did 5 anyone ask Mr. Verduyn any questions at this meeting 6 that you recall?
7	A Maybe. But I'm not positive. He might have been on 8 the phone. I just don't know for sure.	7 A Oh, I'm sure there were questions asked. I don't 8 remember any specifics, but there are always -- yeah, 9 there were a lot of questions asked I'm sure.
9	Q And maybe Mr. Evers and Mr. Hall, but you're not sure 10 either?	10 Q Do you remember what any questions were?
11	A I -- I really don't believe Dave Hall participated in 12 that meeting. I could be wrong. And I'm not certain 13 about Bill Evers.	11 A Not -- not specifics. I mean, I remember we asked 12 questions about, you know, the climate at the 13 dealership when the audit was performed, who was 14 involved -- who -- you know, who was involved. Um, 15 the -- the -- um, you know, trying to understand more 16 about the nature of the -- the transactions that 17 occurred. Some of them were quite complicated and the 18 -- and where the motorcycles went, who paid for them, 19 who was reported to have paid for them and/or took 20 delivery.
14	Q Um, did Mr. Verduyn say anything else apart from what 15 you've already talked about?	21 Um, so, yeah, I know we asked a lot of, 22 questions and I know -- I know I asked some questions, 23 and I know others did too. It was a fair amount of 24 question and answer and understanding all of the 25 various issues.
16	MR. BERKOWITZ: Well, again, excluding any 17 solicitation of advice of counsel or comments of 18 counsel.	
19	THE WITNESS: You know, I would say that I 20 don't remember specifics. I do know that he's -- he 21 -- he did go through the various non-retail sales and 22 types of non-retail sales describing his findings in 23 some detail. So, um -- yeah, I'm fairly certain that 24 he commented about things beyond perhaps the things I 25 mentioned earlier. I don't remember the specifics	

<p style="text-align: right;">Page 230</p> <p>1 Q Did Mr. Verduyn indicate, um, you know, what 2 information, if any, he had received, um, from the 3 dealer apart from what information was in the dealer 4 files?</p> <p>5 A Information received from the dealer, by that you mean 6 John Atwood or --</p> <p>7 Q John Atwood, Ron Buchbaum -- any employees?</p> <p>8 A As I recall, he mentioned that he had a discussion 9 with Ron Buchbaum about some of the sales. As I 10 recall, either some of Ron's family members or 11 acquaintances or somebody was involved in the reported 12 purchase of some of the motorcycles. So I -- I seem 13 to recall that there was some discussion about, um, 14 Steve's interaction with Ron on some of these sales. 15 I don't remember too many specifics.</p> <p>16 Q Do you recall any -- any discussion in this meeting 17 about whether a Dear Dealer letter or non-retail 18 letter had been sent?</p> <p>19 A No, I don't recall if -- if we talked about that or 20 sent one.</p> <p>21 Q Do you recall if one was sent?</p> <p>22 A No, I don't.</p> <p>23 Q Do you recall if Verduyn did anything to, um, elicit 24 from the dealer the dealer's side of the story as to 25 why these were in fact retail sales?</p>	<p style="text-align: right;">Page 232</p> <p>1 Q It's not a common practice at Harley-Davidson for 2 people to take notes at meetings?</p> <p>3 A I would say certain meetings it is common practice. 4 Um, I don't think this type of meeting there -- there 5 would be -- that it would be common to take notes. 6 Um --</p> <p>7 Q Why not?</p> <p>8 A Well, we're reviewing a lot of documentation that for 9 the most part I think speaks for itself. Um, I mean, 10 oftentimes there's a summary of the -- you know, by 11 VIN of the types of non-retail sales or issues, but 12 there's not a lot of -- I mean, aside from asking 13 questions about what we're looking at and the 14 material, I can't think of too many reasons why there 15 would need to be notes taken. Where, you know, in 16 this case there were 40 plus suspected non-retails, 17 and ultimately we determined to be non-retail sales. 18 Um, that's pretty -- you know, you're reviewing 19 the documents, you're talking about the -- you know, 20 the trail of, um, the report, when the reporting was 21 made -- all the things that you need to understand are 22 contained in those documents.</p> <p>23 Q All right. But most people takes notes to sort of 24 write down what is significant about a larger set of 25 information. I mean, someone could have taken a note</p>
<p style="text-align: right;">Page 231</p> <p>1 MR. BERKOWITZ: As part of the audit or at 2 any time?</p> <p>3 BY MR. REHNQUIST:</p> <p>4 Q In connection with the audit or in connection with any 5 time prior to the audit.</p> <p>6 A I don't -- I don't know if Steve requested the dealer 7 side. Not certain.</p> <p>8 Q Does an audit normally include interviews of employees 9 at the dealer?</p> <p>10 A I don't know for sure if it does or not.</p> <p>11 Q Are there any policies or procedure for how an audit 12 of dealers is to be conducted either into the inquiry 13 into non-retail sales or otherwise?</p> <p>14 A I'm not aware of any such policies.</p> <p>15 Q Does Harley-Davidson have any guidelines at all on how 16 to conduct an audit?</p> <p>17 A I'm not certain. I'm not aware of any specific 18 guidelines, no.</p> <p>19 Q Do you recall any discussion at or in connection with 20 this meeting about whether people should take notes at 21 the meeting?</p> <p>22 A No, I don't recall any discussion about that.</p> <p>23 Q Would it surprise you to learn that no notes of anyone 24 at this meeting have been produced in this litigation?</p> <p>25 A No. It wouldn't surprise me.</p>	<p style="text-align: right;">Page 233</p> <p>1 40 plus sales or 19 to DCI. I mean, things like that, 2 right?</p> <p>3 MR. BERKOWITZ: Objection.</p> <p>4 THE WITNESS: I -- yeah, you're right 5 somebody could have. Um --</p> <p>6 BY MR. REHNQUIST:</p> <p>7 Q Apart from notes, was there any other written record 8 to your knowledge made of what transpired at this 9 meeting?</p> <p>10 A A record of the discussion? No, not that I'm aware 11 of.</p> <p>12 Q I don't mean minutes, but any kind of written record 13 or written document that reflects or summarizes what 14 transpired at this meeting.</p> <p>15 A Not that I'm aware of, no.</p> <p>16 Q And I believe you testified or -- are you aware of 17 whether or not Verduyn made any kind of a written 18 report of his audit or of his findings?</p> <p>19 A No. I don't believe there was a written report. I 20 think there -- there likely would have been a summary 21 page of -- by VIN, but, that would be the, you know, 22 and then maybe broken into the various types of sales. 23 That would be normal for a non-retail sales audit. 24 Um --</p> <p>25 Q I mean, did Mr. Verduyn come into the meeting with any</p>

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1 paper with him at all except for the, um -- the
2 documents from the dealer file and the other documents
3 he had obtained in the course of his audit?

4 A Again, I don't recall any others specifically. There
5 might have been a summary, you know, document. I
6 don't recall for sure though. I don't -- there
7 normally would be a summary document by VIN list, you
8 know, the sale date and who the sale was made to. I
9 don't -- I don't remember that for sure. But usually
10 there would be in a meeting like this. And those
11 would be the only documents that we would need.

12 Q Was there any discussion at this meeting regarding
13 possible sanctions for Cycle-Craft?

14 A I don't recall. I mean -- and again, I think we
15 probably discussed if the non-retail sales activity
16 would warrant termination, um, but aside from other
17 sanctions, I don't recall any discussion.

18 Q And what do you recall being discussed about that --
19 about whether the activity would warrant termination?

20 A I think it was a fairly fair conclusion that the level
21 of non-retail sales activity -- we had no choice but
22 to issue termination notice.

23 Q Why?

24 A Because of the large number involved and the -- large
25 number involved but also the type -- you know, the

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1 clear falsification of documents, um, miss reporting
2 of actual customer names and addresses, um, failure to
3 submit, you know, proper SWR registration information.
4 I think --

5 Q Let's take those one at a -- well -- um, can you read
6 the last answer back please?

7 (Record was read back by the court reporter.)

8 MR. REHNQUIST: Well, it's six. Um, why
9 don't we call it a day?

10 MR. BERKOWITZ: Okay.

11 MR. REHNQUIST: This is -- Mr. Flickinger,
12 we're going to suspend your deposition for now. You
13 have a business appointment to go to, and that's fine.

14 THE WITNESS: Thank you.

15 MR. REHNQUIST: We will have to resume this,
16 and we'll schedule a mutually convenient time through
17 counsel.

18 THE WITNESS: Okay.